Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL-S, MNDCL-S, MNRL-S

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a Monetary Order for unpaid rent, pursuant to section 67;
- a Monetary Order for damage, pursuant to section 67;
- a Monetary Order for damage or compensation, pursuant to section 67;
- authorization to retain the tenants' security deposit and pet damage deposit, pursuant to section 38; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified that respondent Y.R. was served the notice of dispute resolution package in person on April 7, 2018. Respondent Y.R. confirmed receipt of the dispute resolution package on April 7, 2018. I find that respondent Y.R. was served with this package on April 7, 2018, in accordance with section 89 of the *Act.*

The landlord testified that he did not serve respondent R.K. or respondent M.K. with the Notice of Dispute Resolution. Respondent Y.K. testified that she is not in contact with respondent R.K. or respondent M.K. and has not provided either of them with a copy of the Notice of Dispute Resolution. Respondent Y.K. testified that she does not have authority to speak on behalf of respondent R.K. or respondent M.K.

I find that service of the Notice of Dispute Resolution was not served on respondent R.K. or respondent M.K. I therefore dismiss the landlord's claims against respondent

R.K. and respondent M.K with leave to reapply. Pursuant to section 64 of the *Act*, I amend this application to remove respondent R.K. and respondent M.K. from this application.

Preliminary Issue- Is Respondent Y.R. a Tenant?

The landlord testified that respondent Y.R. (the "respondent") signed a tenancy agreement with her mother and brother. The landlord entered into evidence a tenancy agreement which lists the respondent's mother and brother as tenants. The landlord testified that there was not a space to add a third tenant and so he attached Residential Tenancy Branch (RTB) form 26, Schedule of Parties, to the tenancy agreement. The Schedule of Parties lists the respondent.

The tenancy agreement states that there is a one-page addendum with seven additional terms. The addendum lists the respondent and her mother and brother. There are signatures beside all three parties' names.

The respondent testified that she did not sign the addendum and that the signature on the addendum is a forgery. The respondent testified that she told the landlord that she did not want to be on the lease as she was not going to live at the property. The respondent testified that she was just helping her mother and brother find a place to live and that while she was a point of contact, she was not a tenant. Both parties agreed that the respondent never lived at the subject rental property.

The respondent testified that she was in Mexico between November 19-30, 2017 and that it was not possible for her to have signed the addendum. The signature beside the respondent's name is dated November 21, 2017. The respondent entered into evidence text messages between the landlord and herself dated November 19, 2019 in which the respondent states in part:

> "The lease needs to be only signed from my mom and bother as they are your tenants. I am gone to Mexico for vacation for the next month and won't be around. They are 100% responsible and happy to sign the lease themselves and I do no want to be involved. There is no reason for a third signature."

The landlord's response was:

> "[respondent] please give me a call on my cell to further discuss."

The landlord testified that while the respondent did not initially want to sign the lease, she did sign it.

The onus or burden of proof is on the party making the claim. In this case, the respondent in claiming that the landlord fraudulently forged her signature. The onus is on the respondent to prove that the signature on the addendum was not hers. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find that the respondent has not met the burden of proof to establish that she did not sign the addendum. The respondent did not submit copies of her signature for comparison and did not provide proof that she was out of the country on the date next to the signature in question on the addendum. The text message the respondent entered into evidence does not prove that she did not sign the addendum, just that at that time she did not wish to. Based on the evidence and the testimony before me, I find that the respondent is a tenant.

Issue(s) to be Decided

1. Are the landlords entitled to a Monetary Order for unpaid rent, pursuant to section 67 of the *Act*?
2. Are the landlords entitled to a Monetary Order for damage, pursuant to section 67 of the *Act*?
3. Are the landlords entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
4. Are the landlords entitled to retain the tenants' security deposit and pet damage deposit, pursuant to section 38 of the *Act*?
5. Are the landlords entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This fixed term tenancy began on October 1, 2017 and was originally set to end on September 30, 2018; however, the subject rental property was vacated on February 20, 2018. Monthly rent in the amount of $1,500.00 was payable on the first day of each month. A security deposit of $750.00 was paid by the tenant to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

The landlord testified that a pet damage deposit in the amount of $375.00 was paid by the tenant to the landlord. The tenant testified that a pet damage deposit in the amount of $750.00 was paid by the tenant to the landlord. The tenancy agreement states that the tenant paid the landlord a pet damage deposit of $375.00.

The landlord testified that a move in condition inspection and inspection report were conducted on November 19, 2017 with the tenant's mother. The move in condition inspection report was entered into evidence and was signed by the landlord and the tenant's mother. The tenant testified that she didn't know if a condition inspection or inspection report were completed.

The landlord testified that on February 21, 2018 he posted a letter dated February 21, 2018 on the door of the subject rental property requesting the move out condition inspection to occur on February 22, 2018. The landlord testified that on February 23, 2018 he posted a letter dated February 23, 2018 on the door of the subject rental property requesting the move out condition inspection to occur on February 24, 2018. The tenant testified that no one lived at the subject rental property on those dates.

The landlord testified that he completed the move out condition inspection and inspection report alone on February 25, 2018. The move out inspection report was entered into evidence. The move out condition inspection report shows that on the date the move in condition inspection report was completed, the tenant's mother agreed to allow the landlord to retain the security deposit in the amount of $750.00 and the pet damage deposit in the amount of $375.00. The landlord testified that the tenant's mother filled in this section in error at the beginning of the tenancy and did not authorize him to retain both deposits at the end of the tenancy.

Both parties agree that the tenant's husband provided the landlord with the tenant's forwarding address on April 7, 2018.

The landlord testified that in February of 2018 the landlord applied to the RTB through the direct request process for an Order of Possession and a Monetary Order for unpaid rent. The landlord was issued a two-day Order of Possession and a Monetary Order for February's rent. Both parties agreed that the tenants moved out of the subject rental property on February 20, 2018.

The landlord testified that he posted two online advertisements for the subject rental property on February 20, 2018 at a rate of $1,600.00. The landlord testified that he showed the rental property on February 22, 2018 to three different potential renters and one of those renters was successful and rented the subject rental property for March 15, 2018 at the rate of $1,600.00 per month.

The landlord filed for dispute resolution on March 7, 2018 and is seeking the following damages from the tenant:

Item	**Amount**
Drywall repairs	$200.00
Landlord cleaning, 6 hours at $35.00 per hour	$210.00
Removal of bed and food left by tenant, 2 hours at $62.50 per hour	$125.00
Landlord trim repair	$45.00
Replacement of fireproof door	$769.84
Installation of fireproof door	$350.00
Painting	$194.25
Rent for March 1-14, 2018	$750.00
Filing Fee	$100.00

The landlord entered into evidence several photographs of damaged drywall. The move in condition inspection report states that the walls were in good condition. The move out condition inspection report shows that the walls were dirty and damaged. The landlord testified that the subject rental property was built in 2016 and that the walls were in good condition when the tenants moved in. The landlord submitted into evidence a receipt in the amount of $200.00 for drywall repairs. The tenant testified that the walls looked the same on move out as they did on move in.

The landlord testified that the subject rental property was left dirty and that he spent six hours cleaning it up and is seeking reimbursement for his work at the rate of $35.00 per hour. The landlord entered into evidence close-up photographs throughout the subject rental property showing dirt. The landlord also entered into evidence photographs of a dirty fridge, stove and sink.

The tenant testified that her mother cleaned the subject rental property prior to moving out and entered into evidence photographs of several rooms in the subject rental property. The photographs entered into evidence by the tenant were not close-ups and dirt was not readily apparent.

Both parties agreed that the tenant left a bed and mattress at the subject rental property. The landlord testified that he took the bed to the garbage dump and that this was a large inconvenience as he did not have a truck. The landlord also testified that the tenant left food in the fridge which he had to dispose of. The landlord testified that he lost the receipt for the garbage dump but that it took him approximately two hours to remove the bed and food from the subject property and he is seeking compensation for his time in the amount of $62.50 per hour.

The landlord testified that he had to repair the trim in the subject rental property because the tenants damaged it. The landlord entered into evidence photographs of damaged trim. The landlord did not have any receipts but is claiming a charge of $45.00. The move in condition inspection report states that the trim is in good condition. The move out condition inspection report states that the trim is dirty and damaged. The tenant testified that the trim was in the same condition at move in as at move out.

The landlord testified that the tenant’s brother damaged a large metal fireproof door at the subject rental property. The landlord did not submit photographs of the door into evidence. The condition inspection reports do not specifically describe a fire proof door. The landlord entered into evidence an estimate for a new fireproof door in the amount of $687.36. The landlord testified that he has not yet replaced the door but is seeking $769.84 to replace the door. The landlord testified that he added 12% tax to the estimate to arrive at the sum of $769.84. The tenant testified that the fire door was never damaged.

The landlord testified that he estimates that the cost of installing the door to be $350.00 and it is seeking that amount. The landlord testified that he did not get an estimate for the installation of the fireproof door.

The landlord testified that the tenant owes $125.00 for outstanding B.C. Hydro bills. The landlord did not submit any documentary material into evidence regarding the alleged B.C. Hydro bills. The tenant denied owing money for B.C. Hydro bills.

The landlord testified that the subject rental property required re-painting due to all of the drywall damage. The landlord testified that the subject rental property was last painted in October of 2016. The landlord entered into evidence a painting receipt in the amount of $194.25. The tenant testified that the walls were in the same condition when her mother and brother moved in as when they moved out so she was not responsible for the cost of re-painting.

Analysis

Condition Inspection Reports

Section 37 of the *Act* states that when tenants vacate a rental unit, the tenants must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Sections 23, 24, 35 and 36 of the *Act* establish the rules whereby joint move-in and joint move-out condition inspections are to be conducted and reports of inspections are to be issued and provided to the tenants. When disputes arise as to the changes in condition between the start and end of a tenancy, joint move-in condition inspections and inspection reports are very helpful. These requirements are designed to clarify disputes regarding the condition of rental units at the beginning and end of a tenancy.

Where the landlord and the tenant disagree on the move in condition of the rental property and other evidence does not clarify the issue, I rely on the move in condition inspection report as both the landlord and the tenant's mother signed it.

Section 88(g) of the *Act* states that all documents, other than those referred to in section 89 *[special rules for certain documents]*, that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways: (g)by attaching a copy to a door or other conspicuous place at the address at which the person resides**.**

Section 35(2) of the *Act* states that the landlord must offer the tenant at least 2 opportunities, as prescribed, for the inspection. I find that posting an opportunity to inspect on the door of the subject rental property after the tenants have vacated the property does not constitute proper notice because they no longer resided at the subject rental property as required by section 88 of the *Act*.

Section 36(2)(a) of the *Act* states that unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord does not comply with section 35 (2) *[2 opportunities for inspection]*. I find that the landlord failed to comply with section 35(2) of the *Act* and his right to claim against the security and pet damage deposit is extinguished. In determining the condition of the rental property at the end of the tenancy, I find the move out condition inspection report to be of no service as it was not completed in accordance with the *Act*.

Deposits

Based on the tenancy agreement and the move in condition inspection report, I find that the tenants paid the landlord a security deposit in the amount of $750.00 and a pet damage deposit in the amount of $375.00.

Section 38 of the *Act* states that within 15 days after the later of:

> (a)the date the tenancy ends, and
> (b)the date the landlord receives the tenant's forwarding address in writing,
> the landlord must do one of the following:
> (c)repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
> (d)make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord made an application for dispute resolution claiming against the security and pet damage deposits pursuant to section 38(a) and 38(b) of the *Act.*

Damages

Policy Guideline 16 states that it is up to the party who is claiming compensation to provide evidence to establish that compensation is due.

In order to determine whether compensation is due, the arbitrator may determine whether:

- a party to the tenancy agreement has failed to comply with the Act, regulation or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

Under section 7 of the *Act* a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Section 37 of the *Act* states that when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Based on the move in condition inspection report and the testimony of the landlord, I find that the walls and trim in the subject rental property were in good condition when the tenants moved in. Based on the landlord's photographic evidence and testimony, I find that the walls and trim required repair after the tenancy in question ended. The landlord entered into evidence a receipt for drywall repairs in the amount of $200.00.

Residential Policy Guideline 40 states that useful life of drywall is 20 years; therefore, at the time the tenants vacated the rental property there was approximately 224 months of useful life left on the drywall. I find that the tenant is responsible for the cost of repairing the rental property as per the following calculation:

$200.00 (cost of drywall repair) / 240 (months of useful life) = $0.83 (cost per month)

224 (months of useful life remaining) * $0.83 (cost per month) = **$185.92**

The landlord testified that he is seeking $45.00 for the repair work he did for the trim but he did not testify as to how he came to this calculation and did not provide any receipts.

The landlord entered into evidence photographs showing damage to the trim. There is a general legal principle that places the burden of proving a loss on the person who is claiming compensation for the loss. I find that the trim required repair but that the landlord has not proven the quantification of damages and so his claim fails. Pursuant to Policy Guideline 16, I find that the landlord is only entitled to nominal damages in the amount of **$30.00** for the trim work.

Based on the landlord's photographic evidence and the landlord's testimony, I find that the subject rental property required re-painting. Residential Policy Guideline 40 states that useful life of interior pain it four years; therefore, at the time the tenants vacated the rental property there was approximately 32 months of useful life left on the interior. I find that the tenant is responsible for the cost of repainting the rental property as per the following calculation:

$194.25 (cost of re-painting) / 48 (months of useful life) = $4.05 (cost per month)
32 (months of useful life remaining) * $4.05 (cost per month) = **$129.60**

Based on the photographic evidence and testimony of the tenant I find that the tenant's mother cleaned the subject rental property prior to vacating the unit. Based on the photographic evidence and testimony of the landlord I find that the subject rental property was not clean enough to allow a new tenant to move in. I find that the landlord's claim for six hours of cleaning at $35.00 per hour is reasonable and that the tenant is responsible for that charge in the amount of **$210.00.**

The landlord testified that he is seeking $125.00 for removing the bed, mattress and food from the subject rental property. The landlord estimated that the removal of the bed, mattress and food took him two hours. The landlord did not provide a receipt for the cost of removing the bed. There is a general legal principle that places the burden of proving a loss on the person who is claiming compensation for the loss. I find that the landlord suffered a loss as a result of the items left at the subject rental property but that that the landlord has not proven his quantification of damages and so his claim fails. Pursuant to Policy Guideline 16, I find that the landlord is only entitled to nominal damages in the amount of **$50.00** for the removal of the bed, mattress and food.

Based on the evidence of both parties, I find that the landlord has not proved that the fireproof door in the subject rental property was damaged. As the landlord has not proved that the fireproof door was damaged, his claim for compensation for the fireproof door fails as does his claim for the installation cost of the fireproof door. I find that the landlord is not entitled to recover damages for the fireproof door or for its installation.

I find that the landlord has not proved that the tenant owes any money for outstanding B.C. Hydro bills. I find that the landlord is not entitled to recover damages for the allegedly outstanding B.C. Hydro bills.

March 1-14 Rent

Under section 7 of the *Act* a landlord or tenant who does not comply with the Act, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Pursuant to Policy Guideline 16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

Policy Guideline 5 states that where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act, the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

Policy Guideline 5 states that where an arbitrator issues an order of possession, the landlord must begin efforts to find a new tenant after the time limits for a review application have passed.

Pursuant to Policy Guideline 5, if I find that the party claiming damages has not minimized the loss, I may award a reduced claim that is adjusted for the amount that might have been saved.

Policy Guideline 3 states that in a fixed term tenancy, if a landlord is successful in re-renting the premises for a higher rent and as a result receives more rent over the remaining term than would otherwise have been received, the increased amount of rent is set off against any other amounts owing to the landlord for unpaid rent or damages, but any remainder is not recoverable by the tenant.

In this case, an arbitrator ended this tenancy for nonpayment of rent approximately seven months early; thereby decreasing the rental income that the landlord was to receive under the tenancy agreement for the months of March to September 2018. Pursuant to section 7, the tenants are required to compensate the landlord for that loss of rental income. However, the landlords also have a duty to minimize that loss of rental income by re-renting the unit at a reasonably economic rate as soon as possible. The landlord chose to attempt to rent the unit at a rate higher than specified in the Agreement and was successful in finding a new tenant at the higher rate of $1,600.00.

I find that the landlord acted reasonably and promptly by advertising the subject rental property four days after the Order of Possession was issued by an arbitrator. I also find that from March 15-31, 2018 the landlord received $800.00 whereas he would have received $1,500.00 from the tenant for the month of March 2018 under the fixed term tenancy agreement. I find that from April to September 30, 2018, the landlord received $600.00 more that he would have received from the tenants under the original fixed term tenancy agreement.

Pursuant to Policy Guideline 3, I find that the tenant is obligated to pay the landlord from March 1-14, 2018 pursuant to the below calculation:
$1,500.00 (rent due) - $800.00 (rent received from new tenants) = **$700.00**

I also find that the rent owed is to be offset against the $600.00 extra the landlord received from the new tenant for the duration of the original fixed term tenancy agreement.

As the landlord was successful in his application, I find that the landlord is entitled to recover the $100.00 filing fee from the tenant.

Conclusion

Section 72(2) states that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant. This provision applies even though the landlord's right to claim from the security deposit has been extinguished under sections 24 and 36 of the *Act*.

Based on the below calculations, I find that the tenant is entitled to a Monetary Order in the amount of $319.48.

Item	**Amount**
Drywall repairs	$185.92
Trim work- nominal damages	$30.00
Painting	$129.60
Cleaning	$210.00
Bed removal- nominal damages	$50.00
March 1-14, 2018 rent	$700.00
Filing Fee	$100.00
Less increased rent earned from April to September 2018	-$600.00
Less security deposit	-$750.00
Less pet damage deposit	-$375.00
TOTAL	**-$319.48**

The tenant is provided with this Order in the above terms and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 10, 2018

Residential Tenancy Branch